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Court of Appeals Upholds \$14 Million Fine against PG&E for Hiding Faulty San Carlos Pipeline

Historic Judgment Sets Legal Precedent Impacting Entities Regulated by CPUC

San Francisco – The California Court of Appeals this week upheld a historic decision by the California Public Utilities Commission to impose a \$14.3 million fine against the Pacific Gas & Electric Co. for failing to disclose faulty pipeline records in San Carlos for nearly a year – actions that risked public safety by threatening what PG&E’s own engineers likened to a “another San Bruno situation” in an internal email.

[In a 63-page decision](#) released Tuesday, the Court found that the CPUC, in its 2013 decision, acted in the best interest of “protecting the safety of the general public—not to mention the integrity of the state-wide regulatory authority” when it imposed the historic fine against PG&E, which was at the time represented by [Orrick Herrington & Sutcliffe LLP](#).

The Court further agreed that PG&E and its Lead Counsel dangerously misled the Commission by discreetly filing an “errata” – the legal term for a minor correction – on the status of two pipelines, located in San Carlos and Millbrae, nearly a year after a gas leak unexpectedly revealed faulty records for those pipelines.

The Court dismissed PG&E’s argument that the delay resulted in no harm, calling it a misperception of the issue at hand. The Court also criticized PG&E’s defense as “another attempt to gut the PUC’s vital deterrent power of enforcing compliance with its orders.”

“‘No harm no foul’ may work in the schoolyard, but it is no principle for the maintenance of public safety,” according to the decision released on June 16. “Given the context here, PG&E’s emphasis on ‘actual damages’ is dismaying, antithetical to the entire concept of deterrence. The Commission takes a very dim view of denying it information, treating it as a factor in aggravation when it comes to fixing penalty.”

The pipeline at issue was originally listed by PG&E as “seamless” but was in fact a welded and reconditioned gas pipe with a strength test less than records showed. After discovering the error in September – engineers emailed PG&E executives warning them of “another San Bruno situation” if records were not corrected – a legal correction was made by PG&E’s attorneys quietly on the afternoon of July 3, 2013, a day before the CPUC took off for the July Fourth holiday. The correction finally disclosed to the CPUC that PG&E had relied on faulty records to determine the specifications for those pipelines to handle gas at high pressure. It would take the CPUC another four months to notify San Carlos officials.

“This decision confirms what we’ve known all along – that PG&E’s ‘errata’ was a brazen act of damage control and yet another example of PG&E’s attempts to cover its tracks and to use inappropriate pipeline operating pressures, without accurate records and with the same flawed materials that caused a tragic and fatal explosion and fire in San Bruno,” said San Bruno Mayor Jim Ruane.

At the time of the errata filing, San Bruno officials were shocked to discover that, after PG&E’s gross negligence had resulted in the fatal tragedy in San Bruno, PG&E and its legal team chose to perpetuate their deception instead of taking accountability for their flawed recordkeeping and practices.

City officials called on CPUC to issue sanctions and send a message that PG&E’s track record of perpetuating deceptions rather than fixing the problem would not be tolerated – an outcry that eventually resulted in the Commission fining PG&E \$14 million for the incident. PG&E later

appealed that decision, arguing that the Commission could not prove any intent to deliberately mislead.

The Court's Tuesday ruling ultimately sided with the City of San Bruno, San Carlos, TURN and the Commission, concluding that PG&E's actions endangered public safety by withholding critical information.

The decision also set an important legal precedent by demonstrating that 'intent' is not needed to be proved when levying sanctions against a party for misleading the CPUC. In this case, attorneys for PG&E tried to argue that because the Commission could not prove that PG&E had deliberately intended mislead the Commission, they should not be fined.

The Court denied that argument, however, quoting instead the Commission's own ruling that, regardless of the specific reasons why PG&E did what it did, "The withholding of relevant information causes substantial harm to the regulatory process, which cannot function effectively unless participants act with integrity at all times. . . ."

Ruane said the Court's decision sends the right message to PG&E to act with integrity and put safety first.

"We have long questioned how many communities must endure tragedy before PG&E and our state utility regulators wake up and put safety first," he said. "We are encouraged that finally this state's high court has ruled that disingenuous behavior will no longer be tolerated."